



## Developing a portfolio of financially sustainable, scalable, basic legal service models

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1. The year 2015 saw the making of a 15-year international commitment to Global Goal 16 of the 2030 Agenda for Sustainable Development, which seeks to “*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*”. This year will see endorsement of a set of indicators that will be used by states around the world to monitor progress towards the achievement of Global Goal 16. The emerging body of evidence on the effects of the Millennium Development Goals (MDGs) – particularly those relating to health and education outcomes – suggests that Global Goal 16 presents a historic opportunity to focus international attention, influence domestic policy and increase investment in service delivery to improve access to justice.
2. The evidence suggests that in the context of basic education and healthcare delivery the MDGs have:
  - **Marshalled donor attention and spending:** Organization for Economic Cooperation and Development (OECD) data suggests that total net official development assistance (ODA) from major donors increased from around \$80 billion in the mid-1990s to \$127 billion in 2010 and that aid increasingly targeted health and education provision.<sup>1</sup>
  - **Influenced domestic strategy and policy:** national governments have referenced the MDGs in national development strategies, set up new institutions to track progress and used the goals as an opportunity to raise their profiles and demonstrate regional leadership.<sup>2</sup>
  - **Translated domestic commitments into priorities and budget allocations:** policymakers in most developing, and particularly lower-income, countries report that the MDGs have influenced priority setting. This has correlated with increased spending in the health and education sectors as politicians and officials engaged with the Goals to attract and meet conditions attached to aid packages and citizens used them as an advocacy tool with which to hold governments to their commitments.<sup>3</sup>

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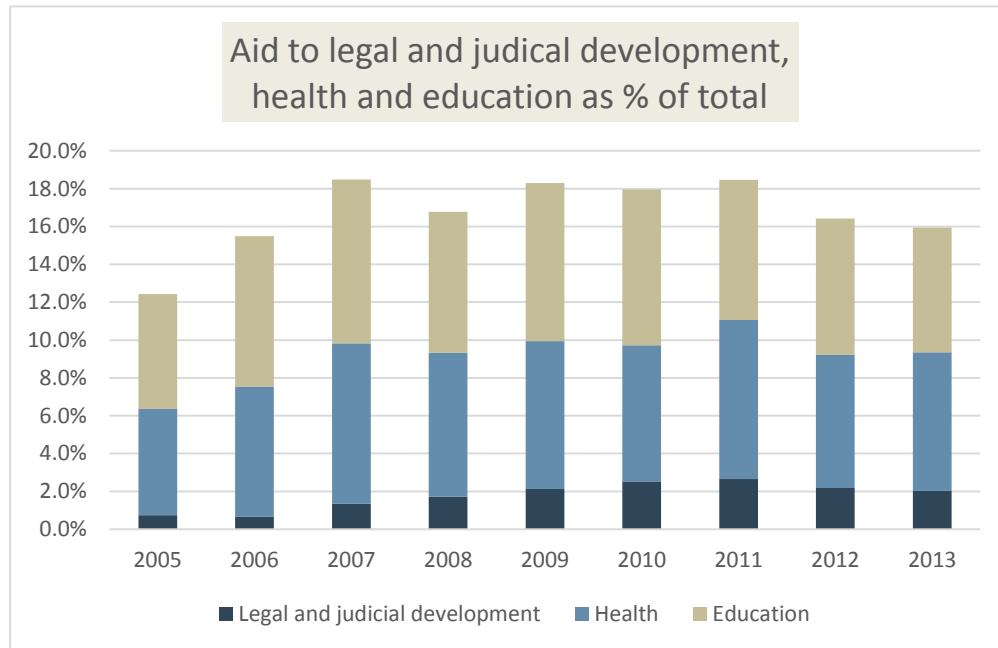
<sup>1</sup> Kenny, C. and Sumner, A. (2011). *More money or more development: what have the MDGs achieved?* Center for Global Development, Working Paper 278.

<sup>2</sup> Sarwar, B. (2015). *National MDG implementation: lessons for the SDG era*. London: ODI.

<sup>3</sup> Lucci, P., Khan, A. and Hoy, C. (2015). *Piecing together the MDG puzzle: domestic policy, government spending and performance*. ODI Working Paper 426.

3. Global Goal 16 appears to present a historic opportunity to produce similar changes in the context of basic justice delivery, given – in particular – the low levels of donor funds that have been devoted to justice in recent years as set out in Figure 1 below. For the period 2005-2013 funding to the justice sector comprised only 1.8% of total aid flows, compared with 7.4% and 7.5% to the health and education sectors respectively.

Figure 1: Justice, health and education share (%) of all aid



4. Nevertheless, Global Goal 16 poses a number of challenges for states around the world. The evidence suggests that only a relatively small proportion of programmes that aim to provide services to the poor are able successfully to reach scale and sustainability.<sup>4</sup> The successful examples which do exist are examples of narrowly targeted solutions to specific challenges in the health and education sectors – for example, water sanitation to reduce childhood mortality<sup>5</sup> and conditional cash transfers to encourage school attendance.<sup>6</sup> By contrast, Tom Carothers’ 2003 assessment of donor engagement in the justice/rule of law sector, that “examples of significant, positive sustained impacts are few” remains true today.<sup>7</sup>
5. In this context, a recent study funded by the Open Society Foundations and International Development Research Centre has developed a framework for thinking about how basic legal service interventions can be taken to scale in a sustainable manner to enable improved access to

<sup>4</sup> Chandy, L., Hosono, A., Kharas, H.L., & Linn, J. F. (Eds.) (2013). *Getting to Scale: How to Bring Development Solutions to Millions of Poor People*, Brookings Institution Press, pp. 2-3.

<sup>5</sup> BRAC, at [www.brac.net/beyond-boundaries/content/mdg-4-reduce-child-mortality](http://www.brac.net/beyond-boundaries/content/mdg-4-reduce-child-mortality), accessed 15 July 2015.

<sup>6</sup> For example, Oportunidades in Mexico reaching around one quarter of the population, Bolsa Familia in Brazil reaching 12 million families, and the Kecamatan Development Programme in Indonesia providing grants for small infrastructure projects to half of all rural villages.

<sup>7</sup> Carothers, T. (2003). *Promoting the Rule of Law Abroad: the Problem of Knowledge*. Working Paper 34. Washington, DC: Carnegie Endowment for International Peace.

justice for people living in the most vulnerable Low Income Countries (LICs) and Fragile and Conflict-Affected States (FCAS).

6. The study draws upon lessons from the successful scaling of basic health and education services, while recognising the factors that render the justice sector unique – such as high levels of politicisation, institutional complexity, plurality, functional complexity, opacity of demand and heterogeneity of (user) need – to begin to answer three key questions:
  - What do we know about the **unit costs of basic legal services and how can we calculate them**;
  - How can **scaled up services be financed sustainably**; and
  - What are the **political conditions that enable justice models to be taken to scale**?
7. These are considered in the context of 17 case studies of basic legal service interventions. 12 case studies are in low and middle income countries, and are distilled into five broad models of intervention: community-based paralegals (Liberia, Myanmar, Sierra Leone), microfinancing justice (Bangladesh, Microjustice4All and Microjusticia Argentina), community law centres (China and Rwanda), hybrid models (South Africa and Ukraine) and justice hubs (Kenya and Uganda). 4 case studies are in OECD contexts (Australia, Canada, the UK and the Netherlands), considered by way of comparison.
8. “*Basic legal services*” are defined as those offering an **elementary level of legal education**, such as **advice and assistance with non-court-based forms of dispute resolution** together with **referral** to providers of formal litigation services and court-based representation where appropriate.<sup>8</sup> The focus is **problems of a civil and administrative nature** where primary justice needs are most often found.
9. “*Scaled up services*” are understood to be those “*serving and effectively benefiting a significant proportion of people living across a country, region or population*,” recognising that scale may involve **increasing the geographic coverage** of a basic legal service, **increasing access** to existing basic legal services by **increasing the capacity or density** of existing provision, **increasing the impact** of basic legal service provision by focusing on strategic issues or particularly vulnerable groups or **reducing the need** for basic legal service provision by providing services that focus on changing the legal and policy environment that shapes the need for basic legal services in the first place.
10. The study attempts to provide a roadmap as to how to calculate the costs of taking a particular intervention to scale and to identify suitable sources of finance, and in doing so seeks to inform and encourage debate of such approaches.

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<sup>8</sup> The study has not generally treated national models of legal aid for formal litigation services and court-based representation as models of basic legal service provision, considering these to be more analogous to secondary healthcare and education. Nevertheless, some of the case study providers examined which offer a wider range of services, most notably the Bangladesh Rural Advancement Committee’s Human Rights and Legal Aid Services, do include some court-based representation.

11. Preliminary findings suggest that **the range of per capita costs for scaling up basic legal service provision for the cases studies in non-OECD countries** (USD 0.1 to USD 1.3) **is lower than in OECD countries** (USD 3 and USD 6). Although affordable in general terms, these figures are still high relative to government revenues and spending on the judiciary, meaning that **governments may be constrained in their ability to finance them**.
12. However, **government funding represents only one of a range of financing options available for scaling up basic legal service delivery**. Drawing on examples from the health and education sectors, the study develops a typology of models spanning national government, donor, philanthropic and private sector sources, concluding that **the suitability and accessibility of many of these models depends on an intervention's ability to provide a financial outcome by monetising service provision and/or to generate a social benefit susceptible to clear measurement**.
13. The study concludes with a number of recommendations, which focus on:
  - **Developing an agreed definition of basic and primary justice concepts** to focus attention in global debates on the implementation of and financing for the Sustainable Development Goals and related financing;
  - **Using macro-level data to benchmark costs** including potentially developing three affordability benchmarks relative to revenue, spending on judiciary and spending on health and education to facilitate cross-country comparisons;
  - **Using legal needs surveys more widely in justice sector interventions** to better understand the scale and type of demand for basic legal services, as well as what demand is and is not being met by existing provision;
  - **Piloting more innovative financing mechanisms and modalities, as well as partnerships between donors and private sector impact investors** to open up new and more sustainable funding streams; and
  - **Incorporating the collection of a broader range of cost and benefit data** in basic legal service programming to support bids for financing to a wider range of funding sources and enable improved programme sustainability.
14. It is hoped that the opportunity presented by Global Goal 16 will be used to take forward discussions around these recommendations so as to further the SDGs' commitment to *"leave no-one behind"*.<sup>9</sup>

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<sup>9</sup> UN Sustainable Development Knowledge Platform. 'Transforming our world: the 2030 Agenda for Sustainable Development', at <https://sustainabledevelopment.un.org/post2015/transformingourworld>, accessed 23 February 2016.